

IN THE DISTRICT COURT OF BUFFALO COUNTY, NEBRASKA

RYSTA LEONA SUSMAN, both)	Case No: CI 19-0158
individually and as natural mother of SHANE)	
ALLEN LOVELAND, a protected person,)	
SHANE ALLEN LOVELAND, a protected)	MOTION FOR LEAVE TO FILE A
person by and through his Temporary)	THIRD-PARTY COMPLAINT AGAINST
Guardian and Conservator, JOHN SAUDER,)	THE GOODYEAR TIRE & RUBBER
and JACOB SUMMERS,)	COMPANY
)	
Plaintiffs,)	
)	
vs.)	
)	
KEARNEY TOWING & REPAIR CENTER,)	
INC., A NEBRASKA CORPORATION,)	
)	
Defendant.)	

COMES NOW, Defendant, Kearney Towing & Repair Center, Inc. (“Kearney”) a Nebraska Corporation, by and through its counsel of record Engles, Ketcham, Olson & Keith P.C., and moves this Court for leave, pursuant to Neb. Rev. Stat. § 25-331, to add third-party defendant, The Goodyear Tire & Rubber Company to the above captioned suit.

Ample case law provides that leave to add a third-party should be freely given; a denial of leave to amend/add a third-party may be justified only by undue delay, bad faith on the part of the moving party, futility of the amendment, or unfair prejudice to the opposing party. *American Home Assur. Co. v. Greater Omaha Packing Co., Inc.*, 2013 WL 1502238 at *1 (D. Neb. 2013). see also *Golnick v. Callender*, 290 Neb. 395, 860 N.W.2d 180 (2015) and *Eadie v. Leise*, 300 Neb. 141, 912 N.W.2d 715 (2018).

Here, this case is in its infancy with only written discovery being exchanged, to date. There remain significant discovery issues, as set forth in a Motion to Compel recently filed by Kearney. Mainly, Plaintiffs’ discovery responses reflect multiple failures on the part of Plaintiffs to comply with the discovery rules. Despite Plaintiffs abusive discovery tactics, Kearney was able to retrieve pertinent evidence to support this Motion and Third-Party Complaint from the federal court’s docket for a case Plaintiffs filed against the proposed Third-Party Defendant, The Goodyear Tire and Rubber Company. Based upon this recently obtained evidence, Kearney believes The Goodyear Tire & Rubber Company is liable for some or all of the damages Plaintiffs allege to be owed in this litigation. Therefore, The

Goodyear Tire & Rubber Company should be added as a named defendant in this litigation. *Slaymaker v. Breyer*, 258 Neb. 942, 607 N.W.2d 506 (2000); *Dammann v. Litty*, 234 Neb. 664, 452 N.W.2d 552 (1990).

WHEREFORE, Defendant, Kearney Towing & Repair Center, Inc., having shown good cause respectfully moves this Court for leave to add third party defendant, The Goodyear Tire & Rubber Company, to the above captioned suit in accordance with the Third-Party Complaint that is attached hereto.

KEARNEY TOWING & REPAIR CENTER, INC.,
A Nebraska Corporation, Defendant

By: 

Stephen G. Olson, II, #18949

Kristina J. Kamler, #24082

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NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED THAT the above matter will come for hearing on the 20th day of September, 2019, before the Honorable John H. Marsh, Buffalo County Courthouse, 1512 Central Avenue, Kearney, NE 68845 at 9:30 a.m., or as soon thereafter as counsel may be heard.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 29, 2019 a copy of the above and foregoing was electronically mailed to the following at the email address listed below:

Michael F. Coyle Fraser Stryker PC LLO 500 Energy Plaza 409 South 17 th Street Omaha, NE 68102 mcoyle@fraserstryker.com Attorney for Plaintiffs	Skip Edward Lynch Kaster Lynch Farrar & Ball LLP 1010 Lamar, Suite 1600 Houston, TX 77002 Skip@thetirelawyers.com Attorney for Plaintiffs
Paul E. Godlewski Schwebel Goetz & Sieben, P.A. 5120 IDS Center 80 S. 8th Street, #5120 Minneapolis, MN 55402 pgodlewski@schwebel.com Attorney for Plaintiffs	Kyle Farrar Farrar & Ball LLP 1010 Lamar, Suite 1600 Houston, TX 77002 Kyle@fbtrial.com Attorney for Plaintiffs

_____/s/ Kristina J. Kamler